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TO THE

EDITORS *of the* ANTI-UNION.

Vendidit hic auro patriam, dominumque potentem
Impoſuit.

VIRG. ÆN. LIB. VI.

IT was with aſtoniſhment I read in the late newſpapers, that ſome Sheriffs had refuſed to comply with requiſitions to convene the Freeholders of their Counties, for the purpoſe of inſtructing Repreſentatives on the ſubject of the Union. I did conceive, that as the blindeſt ignorance could be no apology for ſuch a refuſal, ſo the moſt depraved corruption could not have dictated the adoption of ſuch conduct. At this time, and on ſuch a queſtion, it is impoſſible that Government could be ſo unwiſe as to ſtifle the public breath. The adminiſtration of this country muſt be aware, that a meaſure of ſuch ultimate and vital conſequence, could have no ſecurity for permanence, unleſs it were founded on the declared wiſhes, or the avowed approbation of the conſtituent body. The wiſdom of future times will eaſily diſtinguiſh the ſilence of the people of the preſent day, from acquieſcence or conſent. This truth is ſo obvious, that to impute any tampering with Sheriffs to Government, would be to charge it not only with a crime, which it could not commit, but with blindneſs and folly, of which it is incapable. Let me not, however, waſte time in ſearching into the motives of the miſconduct of thoſe public officers, which, whether it proceeds from indolence, or ignorance, or corruption, deſerves ſevere reprehenſion. I conſider inertneſs on the part of the Conſtituent, at the preſet criſis, as a crime againſt poſterity—and I ſhall call by no other name than treaſon to the conſtitution, the refuſal by a Sheriff to exerciſe the privilege to which he is only entitled by uſage or courteſy, and which the preſent awful occaſion, makes a public and indiſpenſible duty.

Fortunately, however, the power of the people to aſſemble for conſtitutional purpoſes requires not the conſent of the Sheriff, and this great right of the ſubject is not held at will from the officer of the crown. The deſign of this Paper is ſhortly to ſtate what the law conſiders as the privilege of the people of the realm in this reſpect, and how far the exerciſe of that privilege depends on the authority of ſheriffs.

It is unneceſſary to ſupport, by legal proofs, the propoſition, that the ſubjects of this realm have an inherent right by the common law, to aſſemble in any numbers for the purpoſe of petitioning the King, or either Houſe of Parliament, againſt any exiſting, or apprehended, grievance. This proud privilege, peculiar to the conſtitution of theſe countries, has conſtantly been guarded with the moſt anxious ſolicitude. It received repeated confirmations in the earlier times of the Engliſh hiſtory, and whenever it was found neceſſary to aſſert or ſecure conſtitutional liberty, this right, neceſſary to the intereſts, and dear to the hearts of Engliſhmen, was never forgotten. It was part of the ſtipulation in the petition of right in the reign of Charles I.; it formed a prominent feature in the declaration and bill of rights, when the Conſtitution was renovated and eſtabliſhed by the Revolution: and it was carefully introduced into the act of ſettlement, which ſecured the throne to the family of our beloved Sovereign. I cannot better illuſtrate or define the nature and extent of this right, than by tranſcribing the words of a popular author on this topic: "The freedom of canvaſſing political ſubjects, is not limited to the members of the legiſlature, the like privilege is allowed to the other orders of the people, and a full ſcope is given to that ſpirit of party, and a complete ſecurity inſured to thoſe numerous and irregular meetings, which create ſo much uneaſineſs in the Sovereigns of other countries. Individuals may, in ſuch meetings, take an active part for procuring the ſucceſs of thoſe public ſteps, which they wiſh to ſee purſued. The law ſets no reſtriction on their numbers, nor has it, we may ſay, taken any precaution to prevent even the abuſe that might be made of ſuch freedom."—De Lolme—page 48.

Theſe obſervations are made rather with a view to ſhew how ſacred and invaluable the right of the people to aſſemble for political purpoſes, has always been held by our law, than to prepare the way for an inference, that the body in each coun-

ty which elects repreſentatives for Parliament, has alſo the leſs extenſive right of meeting to inſtruct theſe repreſentatives, on queſtions of local, or national, concern. This right, acknowledged in courts of law, ſanctioned by parliament, and exerciſed from time immemorial, requires this day, no confirmation from argument or induction.

Is this, then, a right inherent in the people, but incapable of being called forth into exertion, without the ſanction or ſummons of a ſheriff? Or in other words, were our forefathers ſo ſimple and improvident, that on ſome occaſions they forced from the Sovereign an acknowledgment of this public right, and frequently ſtipulated for its permanence, and yet ſuffered the exerciſe of it (without which the right itſelf would be a mere abſtract idea) to lie at the mercy of an officer whom the crown appoints? It is but neceſſary to ſtate this propoſition, to expoſe its abſurdity: In fact the power to ſummon freeholders, for the purpoſe of inſtructing repreſentatives, is no part of the duty or office of a ſheriff. It is not recognized by our law, either as a duty which he is bound to diſcharge, or an authority which he has a right to exerciſe, and our municipal code knows no ſuch ſolecism as a duty of imperfect obligation, or a power which cannot be enforced. When a writ is delivered to a ſheriff, there is a reciprocal duty on him to execute it, and on thoſe againſt whom it is directed, to comply with its mandate; and the one is as liable to puniſhment for negligence or malverſation, as the other for diſobedience or reſiſtance. In the ſame manner, when the ſheriff ſummons jurors, his duty, and that of the freeholder, is mutual, and each is attended with its aſcertained ſanction. But as the law gives no remedy againſt a ſheriff who refuſes to comply with a requiſition to convene the freeholders of his county for political purpoſes, and provides no puniſhment for the declining to attend ſuch a meeting when aſſembled by him, ſo it follows as a neceſſary inference, that the power to ſummon, or require the attendance of freeholders, on ſuch occaſions, forms no part of his office.—Whence the practice of the ſheriff collecting ſuch aſſemblies originated, whether in the power with which he was inveſted, to compel the appearance of thoſe who owed ſuit at his tourn; or whether, as is moſt probable, in the convenience of thoſe who uſed him as the moſt likely inſtrument of procuring numerous meetings, it is not now neceſſary to enquire; but it may be of ſome utility to correct a common error, that this is a branch of that authority, by which he is enabled to call forth the power of the county, or as it is named, in legal Latin, the *poſſe comitatus*. The reaſon why the conſtitution has entruſted this power to the ſheriff, and the purpoſes for which it may be exerted, may be ſtated in a few words. As he is the miniſter of the law, whoſe peculiar province it is to carry the proceſs and deciſions of courts of juſtice, into execution, it was reaſonable to apprehend reſiſtance in turbulent times and among deſperate men, and it was wiſe to provide ſome force, which, by being immediately at the command of the ſheriff, might prevent, or repreſs, oppoſition. For this purpoſe, the law armed the ſheriff with a privilege of raiſing the power of his county, that is, ſuch a number of men, as are neceſſary for his aſſiſtance, in the execution of the King's writs, quelling of riots, apprehending traitors, robbers, &c. and every perſon above the age of fifteen, not aged or decrepid, is bound to aſſiſt the ſheriff, when called on for theſe ends, on pain of fine and impriſonment. Thus ſtands the authority of the ſheriff, as to raiſing the power of the county, and certainly reaſon, or common ſenſe, cannot diſcover any connection or analogy, between that branch of his office, and the uſage which has taken place, of county meetings ſummoned by him, in purſuance of the requiſition of a few freeholders.

There is another light in which I beg leave to place this ſubject, the rather as it may ſerve as a guide to the conduct which ſhould be obſerved at public meetings. If the ſheriff's approbation were neceſſary previous to a meeting of freeholders, any ſuch aſſembly as had not that ſanction would be illegal, and conſequently each individual who compoſed it would be liable to an indictment as for a public offence. Now, that the evidence of peaceably attending ſuch a meeting could not ſupport any indictment, whatever, is obvious to every lawyer. The loweſt ſpecies of offence which can be committed by a number of men is, what the law knows by the technical name of "an unlawful aſſembly;" and, from the very definition of this crime, it will be apparent, that the peaceable aſſembly of any body of men for conſtitutional purpoſes, cannot be a breach of the law. I take the definition from 1 Hawkin's Pleas of the Crown—book 1ſt. chap. 65. ſect. 9.—"Any meeting, whatſoever, of great numbers of people, with ſuch circumſtances of terror as cannot but endanger the public peace, and raiſe fears and jealouſies among the King's ſubjects, ſeems properly to be called an unlawful aſſembly; as where great numbers, complaining of a common grievance, meet together, armed in a warlike manner, in order to conſult together concerning the moſt proper means for the recovery of their intereſts, for no one can foreſee what may be the event of ſuch an aſſembly." It appears, from this quotation, that the very eſſence, and

ſine qua non of this crime, conſiſts not merely in great numbers of the people aſſembling, but in the circumſtances of terror which accompany them, and which menace the public peace. It is in the threats of hoſtility, and the weapons of war, which raiſe reaſonable fears and jealouſies among the king's ſubjects, and, in theſe alone, that the law diſcovers criminality.

But, it is ſuppoſed by ſome perſons, that a late Act of Parliament, known by the name of the Convention Bill, operates, in ſome manner, to reſtrain the public right which I have endeavoured to illuſtrate. A ſhort ſtatement of that ſtatute will clearly ſhew, that ſuch a ſuppoſition is founded in radical ignorance of its object and proviſions. Previous to the year 1793, many aſſemblies of perſons, who were *deputed* by others, met for the purpoſe of deliberating on public affairs; and, although ſuch bodies had formerly been of eſſential ſervice to the nation, yet the legiſlature perceived, that they had become ſo frequent, and, under the pretence of ſeeking the redreſs of public grievances, their deſigns were ſo dangerous, that it was deemed prudent to ſuppreſs ſuch delegated bodies. For this purpoſe, alone, was enacted the 33d of Geo. 3. xxix. the preamble of which recites, that, " whereas the *election*, or appointment of aſſemblies purporting to *repreſent* the people, or any deſcription or number of the people of this realm, under pretence of preparing or preſenting petitions, &c. may be made uſe of to ſerve the ends of factious and ſeditious perſons, to the violation of the public peace, and the great and manifeſt encouragement of riot, tumult, and diſorder." It then enacts—" that all aſſemblies, committees, or other bodies of perſons *elected*, or in any other manner conſtituted, or appointed *to repreſent*, or aſſuming, or exerciſing, a right, or authority, *to repreſent* the people of this realm, or any number or deſcription of the people of any province, county, city, town, or other diſtrict within the ſame, under pretence of petitioning for, or, in any other manner procuring an alteration of matters eſtabliſhed by law in church or ſtate, ſave and except the houſes of convocation duly ſummoned by the King's writ, are unlawful aſſemblies." Thus, it requires but inſpection of this ſtatute to diſcover, that it was directed merely againſt thoſe delegated ſocieties which aſſembled to ſubvert the conſtitution. Was it the intention of the legiſlature, in this act, to trench upon that right, which the common law of this realm gives to all the King's ſubjects, and, among them, to the freeholders in their counties, of publicly, in their own perſons, meeting either to petition, to remonſtrate, or inſtruct? Let the ſame ſtatute anſwer. In ſection 4th it is " provided, that nothing herein contained ſhall be conſtrued in any manner to prevent or impede the undoubted right of his Majeſty's ſubjects of this realm to petition his Majeſty, or both Houſes, or either Houſe of Parliament, for redreſs of any public or private grievance." It *is* the undoubted right of the ſubjects of this realm—a right, which the intrepid and inflexible ſpirit of our early anceſtors interwove with the laws; which their deſcendants, when beaten from the outworks of the conſtitution, placed in its citadel as the Palladium of their liberties, and defended with their ſwords; which their poſterity, to whom it was tranſmitted as a ſacred inheritance, cautiouſly ſecured by many charters and ſtipulations, and which, even in the coercive laws produced by the neceſſities of our own times, has ſuffered no diminution or reſtraint. And ſhall this right, which has withſtood the open aſſaults of arbitrary monarchs, bend to the timidity, or the ignorance, or the corruption of a county ſheriff? No. This miniſterial officer, if his intentions be honeſt, and his heart incorrupt, may facilitate, but it is not in his power to prevent or impede any meeting of the conſtituent body within his diſtrict. If, therefore, from any paltry motive, a ſheriff refuſes compliance with a requiſition, thoſe who ſolicited his interference, may, by a direct and public application in their own names to their fellow-freeholders, as legally, and, perhaps, not leſs efficaciouſly, procure what they deſire without his aid.

While a ſenſe of public duty, and the generous enthuſiaſm of patriotic virtue lived in the hearts of Iriſhmen—while a love for this country, its laws, and its conſtitution, had yet exiſtence, the right to aſſemble in counties and ſmaller diſtricts was not dormant or inactive. A proſpect of acquiring new privileges, or of caſting aſide old burthens, readily aſſembled the people, and no repreſentative went to Parliament without ample inſtructions from his conſtituents. Where is that noble and high-minded ſpirit flown at this moment, which infinitely ſurpaſſes, in importance, every former period in the hiſtory of our conſtitution? It is not the redreſs of a partial grievance—it is not the hope of extending conſtitutional liberty, which now calls on the people—the conſtitution itſelf is expiring, and, without their legitimate interference, may periſh! People of Ireland awake! For, if you ſleep, you die!

A LAWYER.